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BAY AREA RAPID TRANSIT DISTRICT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JEROME L. GRIMES,	)	Case No. C 07 80138-MISC. CW
	)	
Plaintiff,	)	DEFENDANT BAY AREA RAPID
	)	TRANSIT DISTRICT'S NOTICE
v.	)	OF MOTION AND MOTION TO
	)	DISMISS ACTION BASED ON
(BART) BAY AREA RAPID TRANSIT,	)	FAILURE TO STATE A CLAIM
( <u>Transportation</u> ) ( <u>Non-Police Agency</u> ); VIVENCIO	)	UNDER FRCP RULE 12(b)(6); OR
GONZAGA (AKA: Vincent Flores) (BART Janitor	)	IN THE ALTERNATIVE FOR
07/09/03 Civilian Employee); KEN "KENNETH"	)	ORDER REQUIRING PLAINTIFF
DAM (Community Service Assistant, for, BART)	)	TO PROVIDE A MORE DEFINITE
(07/09/03 Civilian Employee); BRUCE TURNER	)	STATEMENT (FRCP RULE 12(e);
(BART RUN # 225, 07/09/03, 1819 hrs. (1806 hrs.),	)	AND TO STRIKE PUNITIVE
(07/09/03 Civilian Employee) (Terrorist Benjamin	)	DAMAGES UNDER FRCP RULE
Arnold Turner's Foster Relative/Co-Conspirator	)	12(f))
07/12/86 Co-Child Abduction,	)	
	)	Date: August 2, 2007
Defendants.	)	Time: 2:00 p.m.
	)	CtRm 2, 4 <sup>th</sup> Floor
	)	

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 2, 2007, at 2:00 p.m., or as soon thereafter as the matter may be heard in the above-entitled court, in Court room 2, 4<sup>th</sup> Floor, located at 1301 Clay Street, Oakland, California, defendant Bay Area Rapid Transit District ("BARTD") will move this court to dismiss the action with prejudice pursuant to FRCP 12(b)(6) because plaintiff's complaint fails to state a claim upon which relief can be granted, on the grounds that: (1) plaintiff's entire complaint fails to meet the applicable statute of limitations; (2) plaintiff's claim is so vague and ambiguous as to state no cognizable claims against BARTD; and (3) plaintiff's

1 entire complaint is barred by the principles of res judicata and /or collateral estoppel.

2 In the alternative, defendant will move the court to order that plaintiff provide a more definite statement  
3 pursuant to FRCP Rule 12(e) on the grounds that the complaint is so vague or ambiguous that BARTD cannot  
4 be reasonably required to frame a responsive pleading. By this motion BARTD also requests that any and all  
5 references to punitive damages in plaintiff's complaint be stricken as BARTD on the ground that a public entity  
6 is immune from any and all of plaintiff's claims.

7 This motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed  
8 herewith, the pleadings and papers filed herein, and the matters of public record of which judicial notice is  
9 requested.

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11 Dated: June 18, 2007.

12 LOW, BALL & LYNCH

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14 By /s/ Dale L. Allen, Jr.  
15 DALE L. ALLEN, JR.  
16 JOSHUA M. BRYAN  
17 Attorneys for Defendant  
18 BAY AREA RAPID TRANSIT DISTRICT  
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